

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**ALPHONS MARICHE**  
Claimant

VS.

**IBP, Inc.**  
Respondent  
Self-Insured

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Docket No. 217,540

**ORDER**

Claimant appealed the award dated February 13, 1998, entered by Administrative Law Judge Kenneth S. Johnson. The Appeals Board heard oral argument on August 26, 1998. The Director appointed Jeff Cooper of Topeka, Kansas, as Appeals Board Member Pro Tem to serve in place of Gary M. Korte, who recused himself from this proceeding.

**APPEARANCES**

Kelly W. Johnston of Wichita, Kansas, appeared for the claimant. Gregory D. Worth of Lenexa, Kansas, appeared for the respondent.

**RECORD AND STIPULATIONS**

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

**ISSUES**

The Administrative Law Judge denied claimant's request for benefits after finding that claimant failed to prove his knee arthroscopy was directly related to his February 18, 1996, fall at work. The Administrative Law Judge found that it was more probably true than not true that the knee injury that claimant sustained while working for the respondent had resolved, and that claimant later reinjured his knee after he was terminated from respondent's employment.

Claimant requested the Appeals Board to review the following issues:

- (1) Did claimant's accident on February 18, 1996, cause the stipulated 5 percent functional impairment to the right knee?
- (2) Was claimant disabled for a period of at least one week from earning full wages at the work at which he was employed as required by K.S.A. 44-501(c)?
- (3) Is claimant entitled to receive medical compensation?

#### **FINDINGS OF FACT**

After reviewing the entire record, the Appeals Board finds:

- (1) Alphons Mariche began working for IBP, Inc. in January 1996. On February 18, 1996, he fell at work while walking up some steps and landed on his right knee. The parties stipulated that Mr. Mariche's accident arose out of and in the course of employment with IBP.
- (2) Mr. Mariche immediately reported the accident and was referred to the company doctor, Myron J. Zeller, M.D. Dr. Zeller first saw Mr. Mariche on February 27, 1996, and restricted him from walking up and down stairs. Because of that medical restriction, IBP placed Mr. Mariche on a lighter job. When the doctor last saw Mr. Mariche on April 12, 1996, the doctor released him to return to work without restrictions.
- (3) Although he was released without restrictions and limitations, Mr. Mariche continued to experience symptoms in his right knee. Those symptoms continued and were exacerbated when Mr. Mariche's two-year-old son struck his upper knee cap with a foam bat in approximately July 1996.
- (4) Because of the increased pain from the bat incident, in August 1996 Mr. Mariche sought medical treatment from board-certified orthopedic surgeon Guillermo Garcia, M.D. After an MRI, Dr. Garcia recommended an arthroscopy of the knee joint, which he performed on September 4, 1996. During that surgery, Dr. Garcia found and repaired a minor tear in the medial meniscus.
- (5) According to Dr. Garcia, the foam bat incident did not tear the meniscus as there was a lack of blood, which indicated an old tear. The Appeals Board finds that testimony persuasive.
- (6) One of the principle issues in this proceeding is whether Mr. Mariche has proven that the meniscal tear was caused by the accident at IBP or elsewhere. Dr. Zeller admits he did not check for internal derangement in the knee joint and, therefore, could not provide an opinion on that issue with any degree of certainty. Because he was not treating

Mr. Mariche at the time, Dr. Garcia testified that he could not say whether Mr. Mariche had a tear when he was treating with Dr. Zeller.

(7) Despite the uncertainties in the medical testimony, the Appeals Board finds that the meniscal tear and, therefore, the arthroscopy are directly related to the February 1996 fall at IBP. That conclusion is based upon the facts that Mr. Mariche had no problem with his knee before that accident, but remained symptomatic even after he was released to return to work by Dr. Zeller and throughout the period before he sought Dr. Garcia's treatment. Although Mr. Mariche did work for several other employers during that interim period, there is no evidence or indication that he injured his knee while working for those other employers.

(8) The medical treatment Mr. Mariche obtained from Dr. Garcia was unauthorized as the record fails to establish otherwise.

#### **CONCLUSIONS OF LAW**

(1) Because Mr. Mariche has a "scheduled" injury to the leg, K.S.A. 44-510d(a) governs the computation of permanent partial disability benefits. That statute provides in part:

If there is an award of permanent disability as a result of the injury there shall be a presumption that disability existed immediately after the injury and compensation is to be paid for not to exceed the number of weeks allowed in the following schedule: . . .

(16) For the loss of a leg, 200 weeks. . . .

For the permanent partial loss of the use of a finger, thumb, hand, shoulder, arm, toe, foot or leg, or the sight of an eye or the hearing of an ear, compensation shall be paid as provided for in K.S.A. 44-510c and amendments thereto, per week during that proportion of the number of weeks in the foregoing schedule provided for the loss of such finger, thumb, hand, shoulder, arm, toe, foot or leg, or the sight of an eye or the hearing of an ear, which partial loss thereof bears to the total loss of a finger, thumb, hand, shoulder, arm, toe, foot or leg, or the sight of an eye or the hearing of an ear . . . .

(2) The parties stipulated that Mr. Mariche has a 5 percent functional impairment to the right knee. Multiplying the 5 percent permanent partial functional impairment rating by the 200 weeks for the loss of the leg yields a total of 10 weeks of permanent partial disability benefits that Mr. Mariche should receive for this injury.

(3) Mr. Mariche is entitled to receive permanent partial disability benefits despite the provisions of K.S.A. 44-501(c), which provides:

Except for liability for medical compensation, as provided for in K.S.A. 44-510 and amendments thereto, the employer shall not be liable under the workers compensation act in respect of any injury which does not disable the employee for a period of at least one week from earning full wages at the work at which the employee is employed.

(4) Because Mr. Mariche was placed on light duty and, therefore, disabled for longer than one week from performing his "regular" work as that term is used in K.S.A. 44-510(c), Mr. Mariche is entitled to receive permanent partial disability benefits for this injury. Additionally, Mr. Mariche was also disabled from performing his regular work immediately after the September 1996 arthroscopy. That period of disability also lasted for greater than one week and, therefore, also satisfies the requirements of the statute in question.

(5) The medical services provided by Dr. Garcia are unauthorized. Therefore, IBP is responsible for only \$500 of that expense.<sup>1</sup> However, those medical expenses incurred with Dr. Zeller and his referrals were authorized and are IBP's responsibility.

#### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the award dated February 13, 1998, entered by Administrative Law Judge Kenneth S. Johnson should be, and hereby is, modified as follows:

**WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR** of the claimant, Alphons Mariche, and against the respondent, IBP, Inc., a qualified self-insured, for an accidental injury which occurred February 18, 1996, and based upon an average weekly wage of \$567.49 for 10 weeks of permanent partial disability compensation at the rate of \$326 per week or \$3,260, for a 5% functional impairment to the right leg, making a total award of \$3,260, which is all due and payable.

The respondent is responsible for the medical expense incurred with Dr. Zeller and his referrals. Also, the respondent must pay \$500 unauthorized medical expense for those expenses incurred with Dr. Garcia.

Should additional medical treatment be needed, the claimant may make proper application to the Director.

The fees and expenses set forth in the award are assessed to the respondent.

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<sup>1</sup> K.S.A. 44-510(c)(2).

The Appeals Board adopts those orders in the award that are not inconsistent with the above.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 1998.

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BOARD MEMBER PRO TEM

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BOARD MEMBER

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BOARD MEMBER

c: Kelly W. Johnston, Wichita, KS  
Gregory D. Worth, Lenexa, KS  
Philip S. Harness, Director